In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1015

TRED-AIR OF CALIFORNIA, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

The only issue raised by this case is whether the president of a corporation, rather than an attorney, may represent the corporation at a National Labor Relations Board proceeding.

1. The Board found that the Company, which fabricates and recaps aviation tires, violated Section 8(a)(1) of the National Labor Relations Act by unlawfully interrogating employees concerning their union activities, threatening that overtime work would be eliminated and the plant would be closed if the employees voted to unionize, and promising paid vacations and other benefits if they voted against unionization. The Board also found that the Company violated Section 8(a)(3) and (1) of the Act by discharging an em-

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ployee because of his union activities, and Section 8(a)(5) and (1) by refusing to bargain with the certified representative of its employees. (R. 28–30.)[1] The court of appeals, in a *per curiam* opinion, upheld the Board's decision and enforced its order.[2]

2. After service of the complaint, petitioner's president and owner, Odell Lopp, who is not an attorney, wrote the Board's Regional Director, asking for an extension of time for filing his answer and stating, "I have decided, for economic reasons, to handle my own case" (R. 10). At the hearing before the Trial Examiner, Lopp appeared for petitioner. When the Examiner asked if he still wanted to represent the corporation, Lopp explicitly elected to proceed without counsel (R. 26–27; Pet. 5). Following the close of the hearing, petitioner retained counsel who sought a new hearing on the ground that, under California law, only an attorney can represent a corporation and it was unconstitutional to proceed without counsel. Both the Trial Examiner and the Board rejected this contention (R. 27, 44–45), as did the court below (n. 1, *supra*).

3. The court below correctly concluded that there is no substance to petitioner's contention that, since it is

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[1] "R." references are to Volume I of the formal record used in the court below, which has been lodged with this Court. The Board's decision, which is not included in the appendix to the petition, is at R. 25–32, 44–45.

[2] The court's opinion, which was not reproduced in the petition, states:

"The Board's order will be enforced. There is ample evidence in the record to support it. In our view, Tred-Air's constitutional arguments are frivolous."

The court's judgment is reproduced at Pet. App. A, pp. 1–4.

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a corporation, it could only be represented before the Board by an attorney. Whatever may be the rule as to state and federal *judicial* proceedings (Pet. 9–13),[3] participation in a Board proceeding is governed by the provisions of the National Labor Relations Act, which treat a corporation the same as any other person, and do not require appearance through an attorney. Section 10(b) of the Act, 29 U.S.C. 160(b), provides that, when a complaint issues and is served upon a "person"[4] in an unfair labor practice proceeding, such person shall have the right to appear in person "or otherwise." Similarly, Section 102.38 of the Board's Rules and Regulations, 29 C.F.R. 102.38, specifies that any party to an unfair labor practice proceeding may appear "in person, by counsel, or by other representative." Contrary to petitioner's contention (Pet. 13–14), these provisions, rather than California law, govern Board proceedings. See *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111, 123; *Hill* v. *Florida*, 325 U.S. 538, 542.[5]

[3] 28 U.S.C. 1654 provides that "In all courts of the United States, the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

[4] Section 2(1) of the Act, 29 U.S.C. 152(1), defines "person" to include "corporations."

[5] By its terms, 28 U.S.C. 1652, which provides that the "laws of the several states * * * shall be regarded as rules of decision in civil actions in the courts of the United States," is not applicable where "Acts of Congress otherwise require or provide."

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Solicitor General.

PETER G. NASH,
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FEBRUARY 1973.

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